DCPI665/2005

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES NO. 665 OF 2005

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BETWEEN

CHAN KWEI DUEN Plaintiff

and

EAST COUNTRY COMPANY LIMITED Defendant

trading as GOLD RIVER VIETNAMESE FOOD SHOP

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Before: Her Honour District Court Judge Marlene Ng in Court

Date of Hearing: 25th January, 2006

Date of Handing Down Judgment: 3rd February, 2006

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ASSESSMENT OF DAMAGES

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###### Introduction

1. The Plaintiff’s claim is for damages for personal injuries sustained on 16th January 2004 when she was having lunch with friends inside the Defendant’s restaurant premises in Shatin. She slipped and fell on the restaurant’s wet and slippery floor on her way to the washroom inside the restaurant premises and landed on her buttock.
2. The Defendant did not file any notice of intention to defend and interlocutory judgment for damages to be assessed was entered on 7th July 2005. This case came before me on 25th January 2006 for assessment of damages. The Defendant was absent at the hearing.

*The evidence*

1. The Plaintiff herself gave evidence. At the time of the accident she was 55 years old. She is a housewife.
2. After the accident, a Mr Chow (who claimed to be the shop manager of the Defendant) came to help the Plaintiff and called an ambulance. The Plaintiff was sent to the accident and emergency department (“AED”) of the Prince of Wales Hospital (“PWH”). Physical examination revealed localised tenderness over the Plaintiff’s lower back. X-ray examination showed mildly displaced facture of coccygeal spur. The Plaintiff was treated with analgesics and discharged.
3. On 18th January 2004, Dr Lam Ka Lok, PWH’s AED medical officer, gave the Plaintiff a reference letter stating *inter alia* that given her injuries she would find severe back pain whilst sitting. As the Plaintiff was and is a housewife, she did not ask for sick leave.
4. The Plaintiff only attended 2-3 follow up treatments with PWH’s orthopaedic department since the doctors told her further follow up treatments would not improve her condition.
5. The medical report by Dr Chan Siu Wah dated 18th February 2004 recorded that the Plaintiff attended PWH’s AED on 13th February 2004. The following medical findings were noted in the report, namely, *inter alia* “no pain for 2 weeks”, “weight bearing / gait normal”, “no demonstrable weakness or neurological deficit of lower limbs” and “further analgesic treatment not required nor requested by the patient”. The Plaintiff was treated and discharged on that occasion. When she gave evidence, the Plaintiff said she in fact still felt painful at that time. She did not know why Dr Chan recorded that she had no pain for 2 weeks and that she was capable of weight-bearing.
6. For the first 3 months after the accident, the Plaintiff stayed at home except when she had to attend medical consultations and treatments. Given the site of the fracture, she had to remain supine most of the time. However, she was able to move about a little at home, walk to the bathroom and sit for brief spells (eg when she had meals). But she had to adopt a sitting posture that favoured the injured area and could not sit up straight.
7. The medication (particularly the analgesics) from PWH caused stomach discomfort and did not improve her pain, so the Plaintiff resorted to bonesetter and herbalist treatments. She consulted various bonesetters and herbalists after the accident, including those from Mainland China, from end of January to June 2004 :
   1. 吳桂芬跌打醫館 on 17th January 2004;
   2. 項頌高中醫師of 金園中西藥行 on 4 occasions from 26th January to 18th March 2004;
   3. 廣慈正骨 on 13 occasions from 14th May to 2nd June 2004;
   4. 普寧市雲落上洞個體骨科on 2 occasions on 22nd January and 7th February 2004.
8. The Plaintiff also consulted her family doctor, Dr Shih Chin Tien, on 10th May 2004. Dr Shih’s medical report dated 25th January 2005 noted that the Plaintiff suffered severe low back pain. X-ray taken of her lower spine revealed partial posterior dislocation of the coccyx without sign of bony facture and mild spondylosis at C5 and C6. The doctor told the Plaintiff that the dislocation of the coccyx was static and could only be cured by operation. However, given the considerable risk in undergoing such operation at the Plaintiff’s age, she declined to do so.
9. The Plaintiff also consulted Dr Lau Shing Kwong of the Evangel Hospital. Dr Lau’s medical report dated 25th October 2005 noted he first assessed the Plaintiff on 3rd August 2004. She presented with neck pain since January 2004 with associated back pain. As advised by Dr Lau, the Plaintiff attended 8 sessions of physiotherapy treatments at the Evangel Hospital. Dr Lau’s medical report stated that when the Plaintiff returned for follow up on 10th August 2004, she revealed that the symptoms were improving with the drug and physiotherapy treatments. But the Plaintiff defaulted follow up on 17th August 2004.
10. The Plaintiff said it was almost a year before there was gradual recovery. She still felt persistent discomfort at the injured area despite the above treatments. She had to change her posture from time to time whether she was standing or sitting. She also found there was weakness in her lower limbs and around the waist.

*Pain, suffering and loss of amenities (“PSLA”)*

1. On balance I accept the Plaintiff’s evidence. Although Dr Chan of PWH noted in his report there was no pain for 2 weeks prior to the consultation on 13th February 2004 and the Plaintiff was capable of weight bearing, it did not sit well with Dr Lam’s reference letter of 18th January 2004 that the Plaintiff would find severe pain whilst sitting and with the subsequent western and Chinese medical treatments (all documented) sought by the Plaintiff for her condition. I note that the Plaintiff received bonesetter and herbalist treatments from January to June 2004. She consulted Dr Shih in May 2004 and Dr Lau recommended her to undergo (which she did) a course of physiotherapy in August 2004. All the relevant reports referred to back pain. In the circumstances, I accept the Plaintiff had continued pain at least until August 2004 and now she has some discomfort at the injured area. However, there is nothing to suggest that she has any neurological deficit.
2. I agree with Mr Lai, solicitor for the Plaintiff, that the Plaintiff’s injuries fell below the “serious category” as defined in **Chan Pui Ki (an infant) v Leung On & anor** [1995] 3 HKC 732. I have also considered the following authorities (and the PSLA awards therein) cited by Mr Lai :
   1. **Tam Kwok Man v The Kowloon Motor Bus Company (1993) Limited** HCPI775/2001, Beeson J (unreported, 11th July 2003) – HK$150,000.00;
   2. **Lau Li Wing v Secretary for Justice sued on behalf of The Director of Scoial Welfare** HCPI481/1996, Seagroatt J (unreported, 29th October 1999) – HK$500,000.00;
   3. **Lauw Ka Fong v Best City Limited** HCPI436/2004, Suffiad J (unreported, 27th May 2005) – HK$300,000.00.
3. I find that the Plaintiff’s injuries were more serious than those suffered by the plaintiff in **Tam Kwok Man**’s case, who only suffered mild contusion of the back with residual pain for some months. However, the Plaintiff’s injuries were less serious than those suffered by the plaintiffs in the other 2 cases. The plaintiff in **Lau Li Wing**’s case fractured her lower coccyx bone and suffered from chronic depression which brought her within the “serious category”. The plaintiff in **Lauw Ka Fong**’s case suffered sprained lower back, sublaxation of the coccyx, linear fracture at S1 and fine cortical fracture at S3 of her sacrum with persistent residual pain at the sacral and coccyx region.
4. Having considered the Plaintiff’s circumstances and the authorities cited, I assess the amount of damages for PSLA at HK$200,000.00.

*Loss of earnings and loss of earning capacity*

1. There is no claim under this head as the Plaintiff is a housewife.

*Medical expenses*

1. The following medical expenses are related to the Plaintiff’s injuries arising from the accident and are supported by receipts :
   1. PWH’s charges (for consultations on 30th January and 13th February 2004) – HK$150.00;
   2. Dr Shih’s consultation on 10th May 2004 – HK$300.00;
   3. X-ray charges – HK$840.00;
   4. Dr Lau’s consultations on 3rd and 10th August 2004 – HK$850.00;
   5. Physiotherapy treatments at the Evangel Hospital between 3rd and 28th August 2004 – HK$3,340.00.
2. Mr Lai submitted that Dr Shih’s total consultation charges should be HK$600.00. However, careful checking of the discovered documents revealed that Dr Shih’s receipt of HK$300.00 and Dr Shih’s medical report noting his consultation fee of HK$300.00 were both referable to the same consultation on 10th May 2004.
3. There is included in the trial bundle an undated receipt by Dr K F Kuan of Associated Trauma & Orthopaedic Practice for “fracture coccyx” in the sum of HK$450.00. However, the Plaintiff did not in her witness statement or oral evidence mention having consulted Dr Kuan and this did not feature in Mr Lai’s submissions. I decline to award such sum.
4. I therefore award medical expenses of HK$5,480.00.

*Bonesetter and herbalist fees*

1. In assessing special damages under this head, I bear in mind that fracture of the coccyx is known to produce lasting pain and discomfort. The Plaintiff also gave evidence that western medicine in the form of analgesics caused stomach discomfort. She said she had faith in the efficacy of bonesetter and herbalist treatments, which expenses are supported by receipts.
2. I consider that the period over which the Plaintiff sought bonesetter and herbalist treatments, ie from 17th January to 2nd June 2004, reasonable. I refer to **Yu Ki v Chin Kit Lam & anor** [1981] HKLR 419, 422 and award the following bonesetter and herbalist expenses in the total sum of HK$5,249.00 :
   1. 吳桂芬跌打醫館 – HK$150.00;
   2. 項頌高中醫師of 金園中西藥行 – HK$819.00;
   3. 廣慈正骨 – HK$2,930.00;
   4. 普寧市雲落上洞個體骨科 – HK$1,350.00.

Travelling expenses

1. The Plaintiff claimed HK$2,000.00 as travelling expenses. Taking into account that (a) the Plaintiff resided at Shatin and had to attend medical, physiotherapy, herbalist and bonesetter consultations in Shatin, Mongkok, Hunghom and other areas, (b) the number of medical consultations as well as physiotherapy and bonesetter treatments, and (c) the nature of her injuries, the travelling expenses claimed are not unreasonable. In the circumstances, I am prepared to award the sum claimed.

*Tonic food*

1. The Plaintiff claimed HK$4,500.00 for tonic food including 花膠, 杜仲and 鹿尾靶. The purchase of鹿尾靶for HK$3,600.00 is supported by receipt. The Plaintiff explained that 鹿尾靶must be purchased whole and it was divided up for consumption for 8-10 times. She did not retain the receipts for the other tonic food. The Plaintiff said that she was informed and believed that the aforesaid tonic food was good for strengthening her bones and therefore helpful to her recovery from the coccyx fracture. The sum claimed seems reasonable and I allow that figure.

*Conclusion*

1. I accept the following to be a fair and reasonable assessment of the Plaintiff’s damages :

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| --- | --- |
| PSLA | HK$200,000.00 |
| Medical expenses | HK$5,480.00 |
| Bonesetter and herbalist fees | HK$5,249.00 |
| Travelling expenses | HK$2,000.00 |
| Tonic food | HK$4,500.00 |
| Total | HK$217,229.00 |

1. I therefore grant judgment to the Plaintiff in the sum of HK$217,229.00 against the Defendant. I award interest on the PSLA award at 2% pa from the date of the writ of summons to the date of judgment herein. Interest on the special damages referred to above is granted at half judgment rate (5.044% pa) from the date of the accident to the date of judgment and thereafter at judgment rate until payment.
2. I also grant a costs order *nisi* that the Defendant do pay to the Plaintiff costs of the assessment of damages (including all costs reserved if any) to be taxed if not agreed.

(Marlene Ng)

District Court Judge

Mr Peter Lai of Messrs Ivan Tang & Co for the Plaintiff.

The Defendant in person and absent.